

# **EXHIBIT DX7**

TO DECLARATION OF PETER J. GOSS IN  
SUPPORT OF DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION TO EXCLUDE THE  
OPINIONS AND TESTIMONY OF  
JIM HO, PH.D

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:

Bair Hugger Forced Air Warming  
Products Liability Litigation

This Document Relates To:

All Actions

MDL No.

15-2666 (JNE/FLN)

VIDEOTAPED DEPOSITION

OF

SCOTT D. AUGUSTINE, M.D.

Minneapolis, Minnesota

Friday, March 31, 2017

Reported by:

Amy L. Larson, RPR

Job No. 121237

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1 AUGUSTINE  
 2 the air coming out of the Bair Hugger hose  
 3 and see if you could get any live bacteria in  
 4 that airstream, right?  
 5 A. That's correct.  
 6 Q. So did ABD do anything further to explore the  
 7 question of whether live bacteria were  
 8 actually coming out of the Bair Hugger hose?  
 9 A. I don't recall.  
 10 Q. Did ABD ever share with anybody outside of  
 11 the company the failure of these five  
 12 different tests to detect live bacteria  
 13 coming out of the Bair Hugger hose?  
 14 A. I don't recall.  
 15 Q. The other techniques that are reported here,  
 16 measuring particles, swabbing the inside of  
 17 the unit, those are things you continued  
 18 doing in your various research activities,  
 19 right?  
 20 A. I don't recall.  
 21 Q. You don't recall that you were part of  
 22 several different publications where particle  
 23 counting and swabbing and liquid extraction  
 24 of the inside of the hose were employed and  
 25 then written up?

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1 AUGUSTINE  
 2 you tried five times to get live bacteria  
 3 coming out of the Bair Hugger airstream and  
 4 couldn't get it?  
 5 A. Well, I think we made technical mistakes in  
 6 that, that's my opinion.  
 7 MR. COREY GORDON: Why don't we  
 8 take a break.  
 9 THE VIDEOGRAPHER: We're going off  
 10 the record. The time is 10:27 a.m.  
 11 (Whereupon, a brief recess  
 12 was taken.)  
 13 THE VIDEOGRAPHER: We're back on  
 14 the record. This is the start of media  
 15 number 2, and the time is 10:43 a.m.  
 16 BY MR. COREY GORDON:  
 17 Q. Dr. Augustine, the five times you tried to  
 18 capture bacteria in the airstream -- coming  
 19 out of the airstream of a Bair Hugger hose,  
 20 that would be -- that type of testing would  
 21 be categorized as aerobiology testing, right?  
 22 A. I don't know.  
 23 Q. Okay. Do you know what aerobiology testing  
 24 is?  
 25 A. No.

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1 AUGUSTINE  
 2 MR. BENHAM: Objection to the form  
 3 of the question, vague and compound.  
 4 THE WITNESS: There were studies  
 5 done to that effect, yes.  
 6 BY MR. COREY GORDON:  
 7 Q. And you were involved in several of those  
 8 studies, weren't you?  
 9 A. Are you saying me or the company?  
 10 Q. Yes, you, Scott Augustine.  
 11 A. I'm sure I was at least peripherally  
 12 involved, yes.  
 13 Q. Okay. And you know that several of those  
 14 studies were published, right?  
 15 A. That's correct.  
 16 Q. And -- and, in fact, you, for the last  
 17 several years, have spoken at many  
 18 conferences and you've written many -- many  
 19 things for public consumption where you  
 20 describe the particles that you've counted  
 21 coming out of the Bair Hugger and the  
 22 bacteria that you scraped off from the inside  
 23 of the Bair Hugger, right?  
 24 A. That's correct.  
 25 Q. But you've never once publicly disclosed that

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1 AUGUSTINE  
 2 Q. Would you defer to Mark Albrecht as to any  
 3 expertise in the appropriate sampling  
 4 techniques for trying to capture bacteria?  
 5 A. Well, expertise would be an overstatement.  
 6 Q. Well, he's the guy that was in charge of this  
 7 project, right?  
 8 A. That's correct.  
 9 Q. And I assume you wanted him to do whatever it  
 10 took to get the right assistance, the right  
 11 guidance to do the right thing in terms of  
 12 this -- these -- these tests to try to  
 13 capture blood -- bacteria from the  
 14 Bair Hugger, right?  
 15 A. If the question is did I want him to do the  
 16 right thing, the answer is yes.  
 17 Q. Okay. You wanted him to approach it from the  
 18 most scientifically-sound process that he  
 19 could, right?  
 20 A. Well, since this doesn't come with an  
 21 instruction book on how to do it, it -- this  
 22 was more like an experiment to see if we  
 23 could do it, so I don't know about  
 24 scientifically sound.  
 25 Q. So these different tests that we were --